

GORDON J. BLAKE ET AL.

IBLA 83-467

Decided August 2, 1983

Appeal from decision of Utah State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. U MC 136339 through U MC 136347.

Vacated in part; affirmed in part.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

Where mining claims are located on public land that is subsequently transferred to the State of Utah, the Department of the Interior has no further interest in or control over that land, and a mining claimant is not required to comply with the recordation and filing requirements of the Federal Land Policy and Management Act of 1976.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claims--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

APPEARANCES: Scott A. Gubler, Esq., Saint George, Utah, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

This appeal is taken from the decision of the Utah State Office, Bureau of Land Management (BLM), dated February 28, 1983, which declared the unpatented B & W Gyp Nos. 1 through 9 placer mining claims, U MC 136339 through U MC 136347, abandoned and void because no proof of labor or notice of intention to hold the claims was filed with BLM by October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The appellants are Gordon J. Blake, LaFave J. Leany, Reed J. Leany, Elsie B. Cox, Estate of Arthur Fawcett, Estate of Howard Milne, Estate of John L. Whipple, and Estate of Fannie M. Whipple.

Appellants state the land on which the mining claims are situated was transferred to the State of Utah in 1964, and they have acquired clear title to the claims from the State, so that the claims are no longer under the jurisdiction of the United States Department of the Interior. They allege that they filed a proof of labor or notice of intention to hold the claims on October 11, 1979.

The record does not reflect any such document filed in 1979, but it does show that proofs of labor were timely filed with BLM in 1980 and 1981.

If, as appellants allege, they have clear title to the mining claims by a deed from the State of Utah, it is difficult to understand why they recorded the claims with BLM in 1979, and why they filed proofs of labor in 1980 and 1981.

The claims are situated in secs. 8, 17, 18, 19, and 20, T. 43 S., R. 15 W., Salt Lake meridian, Washington County, Utah. The B & W Gyp Nos. 1 through 5 were located July 5, 1958; B & W Gyp Nos. 6, 7, and 8 were located September 4, 1959; and B & W Gyp No. 9 was located May 2, 1961.

The land status shows that secs. 17, 18, 19, and 20, T. 43 S., R. 15 W., were conveyed to the State of Utah by Indemnity List No. 278, approved February 4, 1964. The B & W Gyp Nos. 1 through 8 are wholly within these four sections. The area of sec. 8 encompassed by the B & W Gyp No. 9 claim was included in a reclamation withdrawal for the Dixie Project by Public Land Order (PLO) No. 4036 of June 6, 1966, based on an application filed June 27, 1961. The land was withdrawn from all forms of appropriation, including entries under the mining laws. The withdrawal was revoked by PLO 6149 of March 16, 1982.

[1] While appellants recorded the nine claims with BLM pursuant to FLPMA, the record indicates that such recordation was unnecessary for the B & W Gyp Nos. 1 through 8 and that part of the B & W Gyp No. 9 located in sec. 17, since the land embraced by those claims was transferred to the State in 1964. After the transfer, the Department of the Interior had no further interest in or control over the land; therefore, appellants did not have to comply with the FLPMA requirements for those claims on state land.

To the extent the BLM decision declared claims on state land null and void for failure to file a proof of labor in 1979, that decision was improper, and it is vacated.

[2] As for that part of the B & W Gyp No. 9 located on sec. 8, annual filings under FLPMA were required. Since appellants failed to file a proof of labor or notice of intention to hold for the B & W Gyp No. 9 on or before October 22, 1979, that claim was properly declared null and void as to that part located in sec. 8. See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Although appellants assert that a proof of labor was timely filed in 1979, they provide no evidence of filing and the record does not contain such a filing. Under those circumstances we must conclude that the proof of labor was not filed. See Bernard S. Storper, 60 IBLA 67, 70 (1981), aff'd, Storper v. Watt, No. 82-0449 (D.D.C. Jan. 20, 1983).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated in part and affirmed in part.

Douglas E. Henriques
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Gail M. Frazier
Administrative Judge

